

**COMMITTEE ON SUPERIOR COURT
MINUTES
September 7, 2012
Conference Room 345 A/B
State Courts Building, 1501 W. Washington, Phoenix, AZ 85007**

PRESENT: Judge David Mackey, Judge Eddward Ballinger, Judge James Conlogue, Judge David Cunanan, Judge Robert Duber, Judge Richard Gordon, Joshua Halversen, Tim Hardy, Judge Charles Harrington, Judge Carey Hyatt, William Klain, Judge Kenneth Lee, Judge Michala Ruechel, Susan Wilson, Judge Steven J. Fuller, Judge Charles W. Gurtler, Jr., Judge Randall Warner

BY TELEPHONE: Sue Hall, Judge Monica Stauffer

ABSENT: Judge Celé Hancock, Judge Joseph Lodge, Judge Colleen McNally, Patricia Noland

PRESENTERS: Stewart Bruner (AOC), Amy Love (AOC), Carol Mitchell (AOC), Mark Meltzer (AOC), Paul Julien (AOC)

GUESTS: Cindy Cook (AOC), Theresa Barrett (AOC), Jennifer Liewer (AOC), Patrick Scott (AOC)

STAFF: Kay Radwanski (AOC), Kym Lopez (AOC)

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the September 7, 2012, meeting on the Committee on Superior Court (COSC) was called to order at 10:05 a.m. by Judge David Mackey, chair. Judge Mackey welcomed Phil Knox, proxy for Judge Colleen McNally, and Sandra Markham, proxy for Patricia Noland. Judge Mackey welcomed new members Judge Charles Gurtler and Judge Steven Fuller.

B. Approval of Minutes

The draft minutes from the May 18, 2012, meeting of the COSC were presented for approval.

Motion: Judge James Conlogue moved to approve the May 18, 2012, meeting minutes as presented. **Second:** Josh Halversen. **Vote:** Unanimous.

II. BUSINESS ITEMS/POTENTIAL ACTIONS ITEMS

A. Legislative Update

Amy Love (AOC), reported on 2013 legislative proposals. Ms. Love highlighted the following proposals:

2013-1: Probation; PCR (affecting Title 13)

Permits the Superior Court, in addition to the municipal court, to collect probation services fees.

Increases from 200 to 500 the number of hours appointed counsel may bill for post-conviction relief in capital cases. No change is sought for the hourly rate of \$100. Allows up to 18 months from the filing of the first notice of post-conviction relief to file a petition, up from 60 days in current law. Authorizes a designee of the trial court to compensate a PCR attorney from county funds.

A question was asked as to the reason to allow up to 18 months for filing first notice as currently it is 60 days. Ms. Love said that Judge Davis explained in his proposal for this bill that the timelines currently in statute are unrealistic since petitions cannot be filed within 60 or even 120 days or close to 200 hours of counsel time. On average, it takes more than a year to complete a petition for post-conviction relief. The Superior Court is seeking to amend the timeline as well as the number of hours for counsel to be closer to the reality of the capital post-conviction relief process.

2013-2: Driving under the influence; fees; waiver (affecting Title 13)

Permits the court to convert fines, fees, or incarceration costs into a community restitution order at a conversion rate of one hour for every \$10 owed in a manner approved by the court. No amount of restitution may be converted into community restitution hours.

In response to a question as to why this provision would be limited to only DUIs as compared to any sort of criminal offense, Ms. Love stated that the issue of conversion of DUI fines into restitution orders was identified through operational reviews. Patrick Scott (AOC) explained that under A.R.S. § 28-1389, the imposition and the payment of fines are mandatory with no allowance for waiver or suspension of those impositions, including surcharges. However, other statutes, such A.R.S. § 28-1601 do give the court the ability to waive or suspend fines and surcharges.

A question was asked whether this provision would pertain only to misdemeanor DUI charges or if it would apply to felony charges as well. The proposal is directed specifically toward limited jurisdiction courts.

2013-3: Criminal code; conforming changes (affecting Title 13)

A.R.S. § 8-382 – adds a definition of “criminal offense” to the victim’s rights provisions of Title 8 (juveniles) to conform to changes in the Title 13 victim’s rights definition enacted last session. Expands the definition of “criminal offense” to cover all misdemeanors and violations of a local criminal ordinance.

A.R.S. § 13-105 – in the definition of “historical prior felony conviction” referring to out-of-state convictions, changes the language “use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of death or serious injury” to the term “dangerous offense” to conform to the rest of the criminal code. In legislation enacted last session, the no-longer-used language was, in fact, used.

A.R.S. § 13-703 – rounds two sentencing provisions in the category one repetitive conviction subsection, Class 6 mitigated (.3 years to .25 years), Class 6 maximum (1.8 years to 2 years) and rounds one sentencing provision in the category two repetitive offense subsection, Class 3 mitigated (3.3 years to 2.25 years) in order to conform to the rest of the sentencing code where the sentencing ranges are in full, half or quarter years.

Motion: Judge Harrington moved to approve all three legislative proposals for the upcoming session. **Second:** Judge Lee. **Vote:** 15-1, with two abstentions. Judge Duber explained his vote for the record, noting a concern that waiver and conversion of DUI fees into community service could have the consequence of imposing fees that go unpaid and imposing community service that is not completed, resulting in files that would have to be kept open.

A. Proposed ACJA Code Section for Images of Case Documents

Stewart Bruner (AOC) presented a draft ACJA code section for images of case documents. He explained that the technical design of the courts’ remote public access systems is predicated on document-level access and security, not access to the entire case file as a whole. However, at a Commission on Technology (COT) meeting, COT members discussed whether courts should be permitted to combine electronically, into one composite case file, both e-filed documents and those filed at the counter. To solicit input from affected courts, COT members directed Mr. Bruner to draft a new code section that specifies common treatment of electronic documents.

Discussion ensued regarding:

- Destruction of electronic records and the limitations of infinite storage of 1.5 million cases a year. Mr. Bruner noted the tension between indefinite storage

and accessibility to documents and the perceived harm from selling access beyond the approved document retention periods. The cost of retention is being shifted to the AOC through a central document repository.

- Reasons why electronic documents cannot be kept indefinitely. If a case is kept forever, confidential parts of it will have to be redacted forever. Policies regarding who receives access to what records for how long will need to be in place before a vendor opens the door to the repository to begin selling the documents.
- Sale of documents. Rule 123 allows certain types of documents to be sold to holders of an Arizona driver's license or MVD-issued identification. The court has selected a vendor to sell data and documents through an e-commerce front-end with access to the central case index and central document repository that provide the back-end fulfillment.

Mr. Bruner invited COSC members to provide their comments at <http://azdnn.dnnmax.com/Forum/tabid/111/view/topics/forumid/46/Default.aspx>, but stated that higher-level policies for electronic case records must be decided and communicated in advance of any approval of the code section. He will return to COSC to review those higher policies once they have been drafted.

B. Update: Committee on the Impact of Wireless Mobile Technologies and Social Media on Court Proceedings

Mark Meltzer (AOC) updated members on the Impact of Wireless Mobile Technologies and Social Media on Court Proceedings Committee, highlighting the committee's work to date.

The wireless committee has proposed a single admonition to jurors for use in both civil and criminal cases. The admonition includes an oath, an admonition for civil and criminal cases, and a "smart" juror card.

The committee also is proposing revisions to Rule 122, Rules of the Supreme Court. Rule 122.1, which is new, applies to the use of portable electronic devices. The draft language expresses the policy decisions the committee has made concerning the use of these devices in the courthouse. Rule 122 revisions address photography in the courtroom, requiring anyone who wants to use a camera in the courtroom to submit a request and allowing the judge to approve a request for more than one camera. Mr. Meltzer provided copies of the current Rule 122 and a marked-up version of proposed changes in the meeting materials.

Discussion ensued regarding:

- A possible inconsistency between the last sentence of Rule 122(c) and the first sentence of Rule 122(d). Mr. Meltzer stated that typically the process is that the judge who is going to conduct the proceeding receives a request, the judge's staff e-mails or faxes the request to parties and gets their input about whether there will be objections. If there is an objection, the judge holds a hearing. If the judge intends to deny the request or to restrict use in any way, then the judge, at the court's initiative, must conduct the hearing, and at that hearing the party will have an opportunity to object if a party chooses to do so.
- Whether the rule should state that the judge must notify all parties if someone has asked to use a camera.
- Whether use of the word "journalist" in Rule 122(m) implies favoritism of the media.
- The requirement in Rule 122(c) that a person wishing to use a camera in the courtroom must "file" a written request with the case number on it. When a request is submitted with a case number on it, there is a possibility it could be considered a filing and then be subject to record retention schedules. It was suggested that the word "file" be changed to "submit."
- A suggestion that "fair trial" be changed to "fair proceeding" in Rule 122(e)(1).
- The length and depth of the admonition. A concern was raised that a two-page single-spaced admonition may have more information than is necessary. It was noted that mistrials have occurred not because jurors were given insufficient information but rather because they disregarded it. Mr. Meltzer explained that the committee hopes the admonition is clearer, straightforward, understandable, and comprehensive.

C. Update: Advisory Committee on Supreme Court Rules 123 and 125

Kay Radwanski presented an update on the Advisory Committee on Supreme Court Rules 123 and 125. The committee is to make policy recommendations regarding the Internet publication of minute entries and orders in family law and probate cases. The committee was created in response to legislation that was proposed last session that would have affected the identification of children in family law orders and minute entries. The committee also is discussing family law cases and protective order cases and how they are affected by federal law regarding Internet publication of certain protective order information.

D. November 2012 Meeting Date

Members discussed whether the November 2012 meeting date should be moved from the 2nd to the 9th. Members agreed to keep the meeting on November 2.

E. General Jurisdiction New Judge Orientation; 2012 Family Law Conference; Probate Training

Paul Julien (AOC) provided information about the upcoming New Judge Orientation-General Jurisdiction, set for September 10-14, 2012; the Family Law Conference on November 28, 2012; and probate training for judges, attorneys, and unlicensed fiduciaries.

He also explained that the benchbooks are available online on Wendell and are no longer distributed in print form. The annual benchbook update has begun, with a goal of incorporating all recent changes in statutes and court rules. Anyone interested in reviewing any of the benchbooks should contact Mr. Julien.

F. Language Access in the Courts

As courts are required to develop formal, written language access plans that describe court services for non-English speaking court users, Carol Mitchell (AOC) highlighted the important elements of submitted plans and reminded courts of available resources and potential educational projects to assist in enhancing language access services.

Ms. Mitchell encouraged courts to identify languages most frequently encountered in the courts and track the number of requests for languages other than English. She reminded members of the need to ensure that language interpreters are available and be aware that Language Line is always available. She recommended that each court review its language access plan every year.

III. OTHER BUSINESS

A. Next Meeting Date

Friday, November 2, 2012
10:00 a.m. – 2:00 p.m.
Arizona State Courts Building
Conference Room 345A/B

B. Good of the Order/Call to the Public

No public in attendance.

Adjourned at 12:05 p.m.